IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/09/2002

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.34999 of 2002

J.Nagarajan .. Petitioner

-Vs-

1. The Executive Engineer
Arulmighu Madurakaliamman
Thirukoil, Siruvachur
Perambalur District.

2. Fit Person/Assistant Commissioner
Arulmighu Madurakaliamman
Thirukoil, Siruvachur
Perambalur District. .. Respondents

PRAYER: This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus as stated within.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.D.Nandakumar,
Government Advocate

:ORDER

The petitioner contending that he has already offered the lowest bid to the tender notice of the respondents dated 22.7.2002, published in the newspaper on 24.7.2002 for the works stated therein, complains that even after the evaluation of the tenders submitted pursuant to the tender notice dated 22.7.2002 the respondents have issued a fresh tender notice dated 13.8.2002 without canceling the earlier tenders, and seeks a writ of Certiorarified Mandamus to call for the records of the second tender notice dated 13.8.2002 on the file of the second respondent, quash the same and consequently direct the respondents to select and declare the successful tendered out of the tenders received pursuant to the tender notice dated 22.7.2002 and opened on 30.7.2 002.

2. Mr.R.Subramanian, learned counsel for the petitioner referring to Section 10(3) of the Tamil Nadu Transparency in Tenders Act, 1998 (hereinafter referred to as the 'Act') contends that there is an obligation

cast on the respondents to negotiate for reduction of price with the tenderer, if they are so advised, in the interest of the revenue to the respondents.

3. Mr.R.Subramanian, learned counsel for the petitioner further contends that the respondents, even assuming they are empowered to reject the tender, shall do so only under the following circumstances : (a) changes in the scope of procurement, (b) new technologies or substantial design changes, (c) lack of anticipated financial resources, (d) court orders, (e) accidents or calamities, and (f) other unforeseen circumstances. In other words, Mr.R.Subramanian, learned counsel for the petitioner contends that in the absence of any of the above conditions the respondents cannot exercise the power to reject the tenders.

4. Mr.D.Nanda Kumar, Government Advocate takes notice on behalf of the respondents.

5. I am unable to accept any of the above contentions of the learned counsel for the petitioner.

6.1. It is well settled in law that a tender is nothing but an offer. Tender must be unconditional and must confirm to the terms of the obligation. If the terms of the tender notice, in other words, provides for acceptance or rejection of the tender in the larger public interest, there cannot be any complaint that the reasons that weighed the authorities do not fit into Section 12(2) of the Act.

6.2. Similarly, the contention that the respondents are not entitled to call for a fresh tender without resorting for negotiation provided under Section 10(3) of the Act, is also not justified. In my considered opinion, Section 10(3) of the Act is only an enabling provision for the respondents to have negotiation but the same is not mandatory.

6.3. The authorities who have invited the tenders are the best judge to decide either to accept or to reject the same, taking note of the entire stock of the tenders and the subject matter of the work, for which the tenders were called for. The Apex court repeatedly insists that there should be 'play in the joints' to enable the authorities to take appropriate decisions in accepting or rejecting the tenders. Therefore, unless sufficient material is placed before this Court satisfying that there is substantial amount of public interest in calling for fresh tender, and the refusal to accept the tender or invite fresh tenders are attracted by mala fide, it may not be permissible for this Court to interfere with the powers of the authorities to call for fresh tender.

Hence, finding no reasons to interfere with the impugned tender notice dated 13.8.2002 calling for fresh tenders, this writ petition is dismissed. No costs. Consequently, W.P.M.P.Nos.52117 and 52118 of 20 02 are also dismissed.

11.9.2002
Index : Yes

Internet: Yes

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To:

1. The Executive Engineer
Arulmighu Madurakaliamman
Thirukoil, Siruvachur
Perambalur District.

2. Fit Person/Assistant Commissioner
Arulmighu Madurakaliamman
Thirukoil, Siruvachur
Perambalur District.

P.D.DINAKARAN,J.

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